

**CONTROLLING THE OCCUPATIONAL TRANSMISSION OF TUBERCULOSIS  
IN HOMELESS SHELTERS:**

**Applying Occupational Safety Standards to "Volunteers"**

**Prepared By:**

**Roger D. Colton  
Fisher, Sheehan & Colton  
Public Finance and General Economics  
34 Warwick Road, Belmont, MA 02478-2841  
617-484-0597 \*\*\* 617-484-0594 (FAX)  
rcolton101@aol.com (E-MAIL)**

**February 1998**

---

## 1 OVERVIEW

In preparing its draft health standard to control the occupational exposure to tuberculosis in homeless shelters, OSHA has expressed a particular concern over the impact of its standard on volunteers. OSHA estimates that more than five million U.S. workers are exposed to TB in the course of their work. The risk confronting these workers as a result of their contact with TB-infected individuals may be as high as ten times the risk to the general population. The Center for Disease Control estimates the prevalence of TB within homeless shelters, in particular, to be 150 to 300 times the nationwide prevalence rate.

One concern of OSHA, however, is the extent to which "volunteers" working in homeless shelters are extended protections against occupational exposure to TB. The federal OSHA statute protects only "employees." Since one necessary element of being an "employee" is the receipt of wages, the federal OSHA statute does not protect uncompensated workers. Accordingly, this analysis examines the extent to which *state* law extends occupational health and safety protections to volunteers.

The coverage of volunteers by state occupational health and safety laws is important from the financial perspective of the homeless shelter as well. Without such coverage, shelters may well have difficulty in obtaining private insurance for their volunteers. As a general rule, the insurance industry categorizes as "high risk" those organizations that use volunteers.<sup>11</sup> According to one analyst of nonprofit organizations:

In the eyes of commercial insurance underwriters, the presence of volunteers within an organization raises a "red flag." Insurance companies are reluctant to cover volunteers, believing that the organization does not control the volunteers, that volunteers are not effectively screened or trained, that volunteers may not be motivated to succeed in their assignments, and that volunteers are inadequately supervised. As a result of these perceptions, volunteers are either excluded from many liability policies or are assigned to high-risk rate categories, and the organizations are charged correspondingly high premiums.<sup>12</sup>

Given the occupational exposure of volunteers to TB, and given the fact that volunteers are virtually universally excluded from workman's compensation coverage,<sup>13</sup> private insurance is the most likely protection that a homeless shelter may obtain against the occupational exposure

---

\1\ Jeffrey Kahn, "Organizations' Liability for Torts of Volunteers," 133 *Univ. Penn. L.Rev.* 1433 (1985).

\2\ *Kahn, supra*, 133 *Univ. Penn. L.Rev.*, at 1444 (citations omitted).

\3\ *See generally*, Arthur Schaefer, "No Sanctuary from the Law: Legal Issues Facing Clergy," 30 *Loyola L.A. L.Rev.* 177, 188 (1996) ("volunteers who

of volunteers to occupational diseases.<sup>4)</sup> Compliance with a regulatory "safe place to work" regime should help address these insurance industry concerns, both in preventing the spread of disease that may give rise to a cause of action and in showing that all reasonable precautions were taken should a tort challenge be pursued.

This analysis begins with the observation that state occupational health and safety protections can extend protections to volunteers in any one of three ways: (1) by explicitly extending occupational safety standards to volunteers by operation of state statute; (2) by explicitly extending occupational safety standards to volunteers by operation of state agency regulation; or (3) by extending occupational safety standards to volunteers by operation of judicial or regulatory case law.

## **2 ADOPTION BY REFERENCE AND EXTENSION BY STATE STATUTE OR REGULATION.**

The easiest way to determine whether states explicitly extend occupational health and safety protections to volunteers by state statute or agency regulation is to inquire of state occupational health and safety administrators. Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) inquired of each state OSHA administrator<sup>5)</sup> whether his or her jurisdiction extends occupational health and safety protections to "volunteers." If so, administrators were asked whether such extension was accomplished by state statute or by state agency regulation.

The results are presented in Table 1. As this Table shows few states explicitly extend occupational safety standards to volunteers.<sup>6)</sup> Of the 45 states who responded to a request for information, only eleven replied that volunteers were entitled to workplace safety protections.

(. . .continued)

receive no remuneration for services other than meals, transportation, lodging, or reimbursement for incidental expenses, are excluded from workers compensation laws, but may sue the organization if a work-related injury arises out of their work.") (citations omitted).

\4\ One important implication of excluding volunteers from workman's compensation coverage is that such exclusion preserves the tort actions which a volunteer might bring against a shelter that unreasonably fails to provide a safe work place.

\5\ Throughout this discussion, the term "state" is defined to include the District of Columbia.

\6\ For purposes here, "volunteers" were defined to exclude volunteer firefighters and ambulance/emergency medical services volunteers.

### 3 STATE LAW PROTECTION OF "VOLUNTEERS" INDEPENDENT OF FEDERAL OSHA STANDARDS.

Many states extend occupational health and safety protections to "volunteers" without any explicit reference to federal OSHA standards. In this sense, the term "volunteers" should be used with care. In the workplace safety arena, the term is not always used in its popular meaning. While some states hold simply that "volunteers" should be extended the same occupational safety protections as paid employees, other states hold, that while occupational safety standards do not cover "volunteers," that term does not cover all unpaid workers. In some states, an individual who is working without compensation may be deemed a "gratuitous employee." In other states, such a worker might be classified as a "frequenter." In yet other states, workplace safety protections are extended to "business invitees." In each of these instances, work place safety protections may apply. The various results are discussed below.

Table 2 provides a state-by-state analysis of whether uncompensated workers are provided occupational health and safety protections and, if so, under what theory. A blank for any given state should not be construed to mean that volunteers are not covered. It may mean instead that the law is either not settled or could not be determined. Where the law specifically denies occupational safety protections to volunteers, that is specifically stated.

#### 3.1 Overview

In assessing the safe work place obligations of employers toward unpaid workers, it is necessary first to recognize that the term "volunteer" is not a label, but a conclusion. It is generally recognized that "no definition of a volunteer can be given without qualification, since each case must be decided on its own merits."<sup>7\</sup> The rule is stated that under the various definitions of "volunteer" adopted by the courts, "a person who, although not obliged to do an act, yet has an interest in doing it, is not necessarily a volunteer."<sup>8\</sup>

The specific application of this general rule to workplace safety protections is described further below.

---

\7\ 92 *Corpus Juris Secundum*, at 1032 ("volunteer") (citations omitted).

\8\ 92 *Corpus Juris Secundum*, at 1032 ("volunteer") (citations omitted).

### 3.2 *Gratuitous Employees*

Unpaid workers who are found to be not "volunteers" but "gratuitous employees" are entitled to workplace health and safety protections in many states. The rule is stated:

The duties required by law of an employer with respect to its employees are generally not owed by the employer to a person whom the employer has not authorized to render services as an employee. . . [However] one who performs services gratuitously may be deemed not a volunteer, but rather a gratuitous employee, where he submits himself to the direction and control of the one for whom the services are performed; the primary purpose of the acts undertaken is to serve another; and the person performing the work has some interest therein.<sup>9\</sup>

An example helps to illustrate the difference between a "volunteer" and a "gratuitous employee." If a parishioner agrees, without pay, to come to the church on a Sunday afternoon to help cut down a tree, he or she is a "volunteer." If, in contrast, the parishioner agrees, without pay, to come to the church four days a week at designated times to help in the parish cafeteria, he or she is a "gratuitous employee."<sup>10\</sup>

Arizona case law recognizes an employment status of "gratuitous employee." Under this doctrine, a person may have the status of an employee even though he performs services without compensation. The status is achieved when the employee submits himself to the direction and control of the person for whom service is performed and when the employee's acts are done primarily for the purpose of serving the person exercising control.<sup>11\</sup>

---

9\ 27 *Am.Jur.2d*, *Employment Relationship*, §282 ("Generally; volunteers and gratuitous employees"). (date).

10\ Compare, *Cottram v. First Baptist Church*, 756 F.Supp. 1453 (D.C. Colo.), *aff'd without opinion*, 962 F.2d 17 (10th Cir. 1992) with *Vickers v. Gercke*, 86 Ariz. 75, 78, 340 P.2d 987, 990 (1959). See generally, Christenson, "The Legal Definition of a `Volunteer'," *Voluntary Action Leadership*, at 17-18 (Fall 1982) (distinguishing between a "pure volunteer"--one who assists in work in which she has no interest and from which she expects no reward--and a "gratuitous employee"--one who serves on an ongoing basis without pay).

11\ W.John Thomas, "Preventing Non-Profit Profiteering: Regulating Religious Cult Employment Practices," 23 *Arizona Law Review* 1003, 1004 (1981). This law towards "volunteers" is neither recent nor revolutionary. See generally, William Prosser, "Business Visitors and Invitees," 26 *Minnesota L.Rev.* 573 (1942).

"If the benefit is given ((by an unpaid worker) without such expectation (of a return) induced, as in the case of volunteer assistance, it is held very

One legal encyclopedia reports that "whether a gratuitous undertaking is part of a master and servant relationship is determined by two key elements: has the actor submitted himself to the direction and control of the one for whom the service is done, and was the primary purpose underlying the act to serve another."<sup>12\</sup>

It has been said that the right to control the person's conduct is the key element in the determination of whether there is an employment relationship. Another factor to be considered is the right of the "employer" to select (or to dismiss) the worker.<sup>13\</sup> For example, though nominally a "volunteer," a minister was covered by fair wage laws as an "employee" of a religious organization where the organization supervised, could terminate, set compensation for, and provided insurance for the minister.<sup>14\</sup> Other factors that are considered key involve the right to replace the volunteer as well as a determination of whether the volunteer is doing work that, but for the volunteer, would be performed by a paid employee.<sup>15\</sup>  
( . . continued )

generally that the volunteer is not entitled to protection. It is only where such assistance is rendered under such circumstances which indicate that the plaintiff is accepted on the footing of a gratuitous servant, and so implied assured that he will be protected, or where he has some other reason to expect protection in return, that he is regarded as more than a licensee.

Prosser, *supra*, at 607.

\12\ 30 *Corpus Juris Secundum*, §192(c) ("Employer-employee, When relationship exists in general, payment for services") (date).

\13\ 27 *Am.Jur.2d* §1 ("Employment and employment relationship").

\14\ *McClure v. Salvation Army*, 460 F.2d 553 (5th Circ. 1972), *cert. denied*, 409 U.S. 896 (1972); *see also, Malloy v. Fong*, 37 Cal.2d 356, 232 P.2d 241 (1951) (a volunteer minister, whose automobile caused an accident, to be a subagent of the general charitable organization, making that charity liable under respondeat superior, where the volunteer had been appointed to his position by a paid minister of a branch church of the charity, and where the paid minister closely supervised the volunteer's work. In so holding, the court stated that all that was needed to indicate a proper agency relationship, so as to justify liability, was acceptance of the relation between the volunteer and the paid agent of the charity, where the one performing the volunteer work for the other accepted that work, and where the work was performed under his direction).

\15\ *See e.g., Cottam v. First Baptist Church of Boulder*, 756 F.Supp. 1433, 1438 (D.C. Colo. 1991) ("This Court agreed with the court in Davis, 109 S.E.2d at 149-50, regarding the elements to consider in determining whether a master/servant relationship exists. These elements are: (1) the selection and engagement of the servant, (2) the payment of wages, (3) the power of dismissal, and (4) the power of control of the servant's actions. Where all these elements co-exist, a person is a servant and the person who engaged his services is a master. This Court agreed that the power of control is the most significant of these elements.").

In other circumstances, a "gratuitous employee" was defined simply as "a person who performs services without consideration at the express or implied request of another."<sup>16\</sup>

The determination of whether a person is a "volunteer" or a "gratuitous employee" is significant from the perspective of providing safe work places. The general rule is that "a person who voluntarily assumes to act as the servant of another cannot recover for personal injuries as a servant, but the rule is otherwise where he acts as a 'gratuitous employee' rather than a mere volunteer."<sup>17\</sup>

As explained above, the jurisdictions extending workplace safety protections to "gratuitous employees" are noted in Table 2.

### 3.3 "Frequenter" Statutes

In contrast to "gratuitous employee" jurisdictions, some states extend work place safety protections to "frequenters." The term "frequenter," for example, is defined in Section 101.01(2)(e) of Wisconsin statutes as "every person, other than an employee, who may go in or be in a place of employment or public building under circumstances which render such person other than a trespasser."

The West Virginia "frequenter" statute closely tracks the Wisconsin law in many respects:

The statutorily-imposed duties *to furnish a safe place of employment to employees and frequenters* have not yet been the subject of employer liability in the context of the employment of drug-impaired employees. However, the potential application of such statutes was recently made apparent in a federal district court opinion.<sup>18\</sup> In its decision, the court found that an employer's disclosure of an employee's mental condition was justified, in part, by the fact that *the employe(e) presented a*

---

\16\ 30 *Corpus Juris Secundum* § 3(b) ("Employer-employee, employer and employee, definition") (date), citing *Milbank Mutual Insurance Company v. Dairyland Insurance Company*, 373 N.W.2d 888 (N.D. 19xx).

\17\ 30 *Corpus Juris Secundum* § 16 ("Employers' liability: volunteers") (date).

\18\ West Virginia's "safe-place" statute, W. VA. CODE, § 21-3-1, (1985) is identical in relevant part to WIS. STAT. §101.11(1) (1983-84). *But see, Korenak v. Curative Workshop Adult Rehabilitation Center*, 71 Wis. 2d 77, 237 N.W.2d 43 (1976); *Gross v. Dennon*, 61 Wis. 2d 40, 212 N.W.2d 2 (1973) (WIS. STAT. §101.11(1) applies only to unsafe physical conditions).

*dangerous condition in its work place within the meaning of West Virginia's safe-place statute.*<sup>19\</sup> (emphasis added).

One distinction that is drawn in "frequenter" statutes, however, is between providing a "safe *place* of employment" and providing "safe employment." According to Wisconsin courts:

[T]his court [has] said: "It is apparent that 'safe employment' is broader in scope than a safe "place of employment." . . ." It is the employer's duty to supply his Employees with both a safe place of employment and with safe employment. However, the duty to furnish safe employment does not extend to frequenters.<sup>20\</sup>

The Ohio "frequenter" statute is somewhat broader. Like Wisconsin, a "frequenter" in Ohio, as defined by statute, means ". . . every person, other than an employee, who may go in or be in a place of employment under circumstances which render him other than a trespasser."<sup>21\</sup> In turn, the duty owed to frequenters is set forth in sections 4101.11 and 4101.12 of Ohio's Revised Code. Section 4101.11 provides as follows:

Every employer shall furnish employment which is safe for the employees engaged therein, shall furnish a place of employment which shall be safe for the employees therein and for frequenters thereof, shall furnish and use safety devices and safeguards, shall adopt and use methods and processes, follow and obey orders, and prescribe hours of labor reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees and frequenters.

In addition, 4101.12 provides that:

No employer shall require, permit, or suffer any employee to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide, and use safety devices and safeguards, or fail to obey and follow orders or to adopt and use methods and processes reasonably adequate to render such employment and place of employment

---

\19\ Jennifer Adams, "At Work While 'Under the Influence': The Employer's Response to a Hazardous Condition," 70 *Marquette L.Rev.* 88, 116 (1986). (some citations omitted).

\20\ *Leitner v. Milwaukee County*, 94 Wis.2d 186, 287 N.W.2d 803, 806 (Wis. 1980) (citations omitted).

\21\ Ohio Revised Code, 4101.01(E) (199x).

safe. No employer shall fail to do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees or frequenters. No such employer or other person shall construct, occupy, or maintain any place of employment that is not safe.

As can be seen, uncompensated workers who work in homeless shelters may be considered "frequenters" in states that have frequenter statutes. While not employees, neither are these volunteers "trespassers."<sup>22\</sup> As a result, they are entitled to a "safe place of employment" and the shelter is required to do all that is reasonably necessary to protect their life, health, safety, and welfare.

The jurisdictions that extend safe work place standards to "frequenters" are noted in Table 2.

### **3.4 "Business Invitees"**

Both the law of "gratuitous employees" and the law of "frequenters" seem to spring from the common law concept of "business invitees." Even before statutory protections were extended to non-employees, owners of work places owed a common law duty of reasonable care to these uncompensated workers. Hence, some states exist which, while not having specifically extended their law to "gratuitous employees" or to "frequenters," have nonetheless extended their protections to unpaid workers as "business invitees."

A business invitee is a person who has been solicited to come onto (or into) a workplace setting for the business benefit of the owner.<sup>23\</sup> Uncompensated workers have been held to be business invitees to whom a business owner owes a duty of reasonable care to protect from harm. In this sense, however, it is indeed relevant whether the worker is a "pure volunteer" or a person who, in other states, might be called a "gratuitous employee." If the individual's presence is merely permitted or borne by sufferance (rather than invited or solicited), fewer work place safety obligations will attach.<sup>24\</sup>

The concept of "business invitee" is extended to uncompensated employees through operation of agency law. If the volunteer is under the

---

\22\ No one has addressed the overlap between the concepts of "gratuitous employee" and that of "frequenter."

\23\ The purpose of this analysis is not to explore the intricacies of tort distinctions between a "licensee," a "trespasser," and an "invitee," several elements go into classifying someone as a "business invitee."

\24\ cites.

direct supervision of the employer, and subject to the employer's orders, work place safety protections will apply. Consider, for example, the Texas case of *Exxon v. Tidwell*.<sup>125\</sup> While that case did not involve an unpaid worker, the reasoning of the decision closely tracks the reasoning which extends workplace safety protections to uncompensated workers. In *Tidwell*, an employee at a gasoline service station was injured while on the job. In granting the opportunity for the employee to potentially recover against the *oil company*, the Texas court began its analysis by noting that "under the principles of *agency law*, employers are responsible for providing a safe workplace to their own employees."<sup>126\</sup> The person seeking damages in *Tidwell* was an employee of the service station, but not of the oil company.

The court noted that if the oil company undertook direct supervision and control ("to direct the details by which the results were to be accomplished"), a "master-servant" relationship would exist subject to workplace safety protections, even if no employer-employee relationship existed. A later court explained the holding of *Tidwell*, stating that:

The (state) supreme court (in *Tidwell*) noted that relationships between oil companies and individual service station dealers typically are something more than landlord-tenant but *do not reach the level of employer-employee*, and that the relationships determine the extent of the oil companies' duty toward service station employees.

...

...the supreme court concluded that, *no matter what the relationship was between the oil company and the employee*, the true test to determine whether the oil company has a duty to maintain a safe workplace is whether the oil company reserve a right of control or exercised actual control specifically over the safety and security of the workplace.<sup>127\</sup>

Thus, the Texas courts have effectively extended workplace safety protections to persons who are not "employees" by operation of agency law, in much the same manner as protections have been extended to "gratuitous employees" in other states.<sup>128\</sup> Unpaid workers who are invited

---

\25\ 867 S.W.2d 19 (1993)

\26\ 867 S.W.2d at 21. (emphasis added).

\27\ *Brooks v. National Convenience Stores*, 897 S.W.2d 898, 902 (Tex.App. 1995), *citing, Tidwell, supra*. (emphasis added).

\28\ "Gratuitous employees" are recognized under *Restatement of Agency*, §225, which states, "one who volunteers services without an agreement for or expectation of reward may be a servant of the one accepting such services." The comments to this section of the Restatement further qualify the

into the workplace, and who are subject to the direction and control of the employer, will likely have workplace safety protections under agency law.<sup>129\</sup>

The states which extend workplace safety protections to unpaid workers as "business invitees" are presented in Table 2.

### 3.5 *Protecting Volunteers as Volunteers*

In some states, occupational health and safety protections do not turn on whether a "volunteer" is a mere volunteer or whether the worker falls into some other categorization. In these states, workplace protections are extended to all workers, whether compensated or otherwise. In Massachusetts, for example, the state courts have long held simply that: "Doubtless a master owes as high a duty to one who accepts without compensation or contract the position of a servant, as to an employee."<sup>30\</sup>

## 4 SUMMARY AND CONCLUSIONS

In sum, few states explicitly extend workplace safety protections to "volunteers" by state statute or state regulation. Of the 45 states who responded to requests for information about the coverage of volunteers, only eleven indicated that such protections applied under state law.

This explicit extension of protections, however, does not end the analysis. The term "volunteer" is conclusory in nature. When one examines the case law that applies safe work place requirements, it becomes evident that the unpaid worker is frequently extended these requirements. The requirements may not extend to "volunteers" in these states, but "volunteer" has a specified technical meaning. Even when "volunteers" are *not* covered by safe work place statutes, "gratuitous employees" may well be. Even when "volunteers" are not covered, "frequenters" may  
(. . . continued)

general rule, indicating that the service does not need to be continuing, and that consent of the master, or manifestation of such consent, is requisite for the relationship to exist.

\29\ *See also, Baxter v Morningside, Inc.*, 10 Wash. App. 893, 521 P.2d 946 (1974), 82 A.L.R.3d 1206 (the state court, while including in its test the Restatement standard, stated that where one agrees to do something for another's benefit, or submits himself to another's control, with or without expectation of reward, if the party for whom services are rendered consents to those services being performed under his direction and control, the services may be rendered within the scope of the master and servant relationship).

\30\ *Lakube v. Cohen*, 304 Mass. 156, 23 N.E.2d 144, 146 (Mass. 1939). (citations omitted).

well be. In some instances, work place safety protections have been extended to unpaid workers under principles of agency law.

Tables 1 and 2 below present a state-by-state analysis of work place safety protections for uncompensated workers. A blank next to the state should not be construed as indicating that no protections exist. Rather, a blank indicates the law either is not clear or is unsettled.

TABLE 1:  
DOES STATE EXPLICITLY EXTEND FEDERAL OSHA STANDARDS TO VOLUNTEER BY STATE STATUTE OR REGULATION? /a/

State	Cover Volunteers
Alabama	No
Alaska	No
Arizona	Yes
Arkansas	No
California	No
Colorado	Yes
Connecticut	
Delaware	
D.C.	
Florida	
Georgia	No
Hawaii	Yes
Idaho	No
Illinois	Yes
Indiana	No
Iowa	
Kansas	Yes

TABLE 1:  
DOES STATE EXPLICITLY EXTEND FEDERAL OSHA STANDARDS TO VOLUNTEER BY STATE STATUTE OR REGULATION? /a/

State	Cover Volunteers
Kentucky	
Louisiana	No
Maine	
Maryland	No
Massachusetts	No
Michigan	Yes
Minnesota	No
Mississippi	No
Missouri	No
Montana	No
Nebraska	Yes
Nevada	Yes
New Hampshire	No
New Jersey	No
New Mexico	No
New York	Yes
North Carolina	No

TABLE 1:  
DOES STATE EXPLICITLY EXTEND FEDERAL OSHA STANDARDS TO VOLUNTEER BY STATE STATUTE OR REGULATION? /a/

State	Cover Volunteers
North Dakota	No
Ohio	No
Oklahoma	No
Oregon	No
Pennsylvania	
Rhode Island	No
South Carolina	Yes in some cases
South Dakota	No
Tennessee	
Texas	No
Utah	
Vermont	No
Virginia	No
Washington	Mixed
West Virginia	No
Wisconsin	No
Wyoming	No

TABLE 1:  
DOES STATE EXPLICITLY EXTEND FEDERAL OSHA STANDARDS TO VOLUNTEER BY STATE STATUTE OR REGULATION? /a/

State	Cover Volunteers
/a/	Excludes volunteer fire fighters.

Does Duty to Provide Safe Place to Work Extend to Uncompensated Worker Pursuant to State Case Law?		
State	Cover Volunteers	Reason/Theory
Alabama		
Alaska		
Arizona	Yes	Gratuitous employee
Arkansas		
California	Yes	Gratuitous employee.
Colorado	Yes	Gratuitous employee.
Connecticut	Yes	Business invitee.
Delaware	Yes	At a minimum, a "volunteer" is a "business invitee" (case implicitly recognizes status of "gratuitous employee" as well).
D.C.		
Florida		
Georgia	Yes	Without using the "business invitee" terminology, this case adopts reasoning similar to that of a "business invitee." An uncompensated worker is not necessarily a "volunteer." Such a worker is entitled to "ordinary care" to protect his or her safety if, at the time of injury, he or she was engaged in an act, beneficial and of direct interest to himself as well as to the "employer."
Hawaii		
Idaho		
Illinois	Probably	Business invitee.

Does Duty to Provide Safe Place to Work Extend to Uncompensated Worker Pursuant to State Case Law?		
State	Cover Volunteers	Reason/Theory
Indiana		
Iowa	Probably	Although not in work place safety case, court recognized "gratuitous employee" concept.
Kansas	Probably	Although not in work place safety case, court recognized "gratuitous employee" concept.
Kentucky	Perhaps	Held in tangentially related situation that uncompensated worker is not a "volunteer" if working at something in which he/she has an interest.
Louisiana		
Maine	Yes	Gratuitous employee
Maryland		
Massachusetts	Yes	"Doubtless a master owes as high a duty to one who accepts without compensation or contract the position of a servant, as to an employee." (citations omitted).
Michigan	Yes	Person who has interest in work not a "volunteer." See also, 408.1005, Sec 5.1 (MIOSHA): definition of "employee" does not require payment of wages. "Employee means a person permitted to work by an employer."
Minnesota	Yes	See, Oregon and Michigan.
Mississippi		
Missouri	Probably	Fact that uncompensated worker is working at request of employer takes case out of rule that "volunteer" not entitled to workplace protection, unless employee who makes request is not authorized to bind employer.

Does Duty to Provide Safe Place to Work Extend to Uncompensated Worker Pursuant to State Case Law?		
State	Cover Volunteers	Reason/Theory
Montana	Probably	Recognizes category of "gratuitous employee" without applying to work place safety in particular.
Nebraska	Yes	Refused to recognize "gratuitous employee." However, has concept in nature of "frequenter" concept. In <i>Heins</i> , the Nebraska Supreme Court abrogated the classifications of invitee and licensee in favor of a standard of reasonable care for all those lawfully on the premises of another. In <i>Teters</i> , but for the prospective application of <i>Heins</i> , that standard would have applied to a person who, in other states, would have been a gratuitous employee.
Nevada	Yes	Sounds like "business invitee," but does not explicitly rely on "business invitee." "She was a servant in fact, albeit a gratuitous one, and was as much justified in expecting a safe place to work as a servant for hire would have been. She is, then, entitled to occupy the same status."
New Hampshire		
New Jersey		
New Mexico		
New York	No	State "frequenter" statute does not extend to volunteers.
North Carolina		
North Dakota	Yes	Gratuitous employee.
Ohio		
Oklahoma		

Does Duty to Provide Safe Place to Work Extend to Uncompensated Worker Pursuant to State Case Law?		
State	Cover Volunteers	Reason/Theory
Oregon	Yes	"The distinction running through all the cases is this: That where a mere volunteer--that is, one who has no interest in the work--undertakes to assist the servants of another, he does so at his own risk. In such a case the maxim of `respondeat superior' does not apply. But where one has an interest in the work, either as consignee or the servant of a consignee, or in any other capacity, and at the request or with the consent of another's servants undertakes to assist them, he does not do so at his own risk, and, if injured by their carelessness, their master is responsible. . .The hinge on which the cases turn is the presence or absence of said interest. In the one case, the person injured is a mere intruder or officious intermeddler; in the other, he is a person in the regular pursuit of his own business and entitled to the same protection as any one whose business relations with the master expose him to injury from the carelessness of the master's servants."
Pennsylvania		
Rhode Island		
South Carolina	Yes	Gratuitous servant.
South Dakota	Yes	"An employer is responsible to a gratuitous employee for his want of ordinary care."
Tennessee		
Texas	Probably	Agency law (which underlies gratuitous employee concept-ms) calls for safe work place.
Utah		
Vermont		

Does Duty to Provide Safe Place to Work Extend to Uncompensated Worker Pursuant to State Case Law?		
State	Cover Volunteers	Reason/Theory
Virginia		
Washington	Yes	Business invitee.
West Virginia	Yes	Frequenter statute; Fire Creek recognizes doctrine of "employment without compensation" though not within safe work place context.
Wisconsin	Yes	Frequenter statute. However, distinguishes between providing "safe place of employment" and providing "safe employment."
Wyoming		